EMPLOYEES' PROVIDENT FUND (EPF)
v. PERSATUAN BOLA SEPAK KEDAH DARUL AMAN & ORS

HIGH COURT MALAYA, ALOR SETAR
JOHAN LEE KIEN HOW J
[CIVIL SUIT NO: KA-22NCvC-3-01-2021]
31 DECEMBER 2025

Abstract – *Under s. 46(1) of the Employees Provident Fund Act 1991 ('Act'), where an employer fails to pay contributions, 'every director or person responsible for the management of the affairs of the body' at the time of default is jointly and severally liable with the employer. In the scenario of a football association and its office bearers, s. 46 does not make liability contingent upon, ie, whether the office bearer is remunerated and is involved in daily financial decisions. The wording of the statute is clear, strict and unqualified: liability attaches by virtue of holding office during the period of default. The office bearers are to be held individually liable, irrespective of any ambiguity in initial claims or orders, thereby upholding the primary objective of the Act. Thus, office bearers are jointly and severally liable with the association for all outstanding EPF contributions, dividends and late payment charges for the periods during which each of them held office.*

PROVIDENT FUND: *Employees Provident Fund – Unremitted employee retirement fund contributions in violation of statutory obligations – Liability – Action against football association and its office bearers – Whether football association an employer as defined under s. 2 of Employees Provident Fund Act 1991 ('EPF Act') – Whether football association liable to pay EPF contribution arrears as stipulated under s. 45 of EPF Act – Whether office bearers jointly and severally liable with football association for outstanding contributions, dividends and late payment charges under s. 46 of EPF Act – Whether liability attached by virtue of holding office during period of default – Payment of revised claim – Whether assessment precise, accurate and detailed*

CIVIL PROCEDURE: *Liability – Joint and severally – Unremitted employee retirement fund contributions in violation of statutory obligations – Action against football association and its office bearers – Whether football association an employer as defined under s. 2 of Employees Provident Fund Act 1991 ('EPF Act') – Whether football association liable to pay EPF contribution arrears as stipulated under s. 45 of EPF Act – Whether office bearers jointly and severally liable with football association for outstanding contributions, dividends and late payment charges under s. 46 of EPF Act – Whether liability attached by virtue of holding office during period of default – Payment of revised claim – Whether assessment precise, accurate and detailed*

This case centred on the plaintiff's claim to hold the first defendant ('D1') and its office bearers, the second defendant to ninth defendant ('D2 to D9'), jointly and severally liable for unremitted employee retirement fund contributions in violation of statutory obligations. The plaintiff claimed that D1 was, at all material times, classified as an 'employer' under s. 2 of the Employees Provident Fund Act 1991 ('EPF Act'). Consequently, D1 was legally responsible under ss. 43 and 45 of the EPF Act and reg. 3(1) of the EPF Regulations 2001 to remit monthly contributions for its employees to the plaintiff. The plaintiff claimed that D1 failed, refused and/or was negligent in submitting these mandatory EPF contributions for the period spanning December 2019 until July 2020. Due to this failure, the plaintiff asserted that the total principal amounts of outstanding contributions were RM1,519,801, which comprised monthly arrears, including specific amounts. Furthermore, the plaintiff sought additional statutory liabilities such as dividends under s. 45(3) of the EPF Act and late payment charges under s. 49(1) of the EPF Act, accruing until the date of full settlement. The case against the individual defendants (D2 to D9) was based on s. 46 of the EPF Act, which imposed joint and several liability on the office bearers of an association for unpaid contributions and related charges. Despite the plaintiff issuing a notice of demand to all the defendants, they collectively failed, refused and/or were negligent in paying the total amount due. Before the trial commenced, the plaintiff had already received RM1,016,120 from D2, D5, D6, D8 and D9, leading to the discontinuation of the action against them as per the court order; thus, the trial proceeded solely between the plaintiff and D1, D2, D4 and D7. The plaintiff's claim centred on the failure of the defendants, particularly D1, to remit outstanding EPF contributions for the period of December 2019 to July 2020. The plaintiff further argued that D2, D4, and D7, as office bearers of D1, were jointly and severally liable with D1 for the outstanding contributions, dividends and late payment charges. The plaintiff emphasised that a certificate issued under s. 64 of the EPF Act ('certificate') and the plaintiff's assessment forms ('Form E') constituted *prima facie* evidence of the defendants' indebtedness. The issues between the plaintiff and D1 that were to be determined by the court were (i) whether D1 as an employer, as defined under s. 2 of the EPF Act, was responsible for the payment of the outstanding revised claim, along with dividends and interest; (ii) whether D1, as the employer, was liable to pay the EPF contribution arrears as stipulated under s. 45 of the EPF Act; (iii) whether D1, being Persatuan Bola Sepak Kedah Darul Aman and Persatuan Bola Sepak Kedah, were the same entity; and (iv) whether D1 was registered with the Sports Commissioner of the Ministry of Youth and Sports Malaysia. Meanwhile, the issues agreed between the plaintiff and D2, D4 and D7 were (i) whether D2, D4 and D7, as the office bearers in the D1 association, were liable jointly and severally with D1 to pay the revised

claim for the period December 2019 until June 2020, along with dividends and interest, as stipulated under s. 46 of the EPF Act; (ii) whether the type and amount of the plaintiff's revised claim were precise, accurate and detailed; (iii) whether the plaintiff's claim was wrong and defective due to the plaintiff's failure to claim against the other office bearers holding the status of Executive Committee Member; (iv) whether the plaintiff's claim was wrong and defective for uniting the action against all the defendants despite the difference in the amount claimed against D2, D4 and D7 compared to the other defendants; and (v) whether the plaintiff's action of combining all defendants in one action was defective and constituted an abuse of the court process.

Held (allowing plaintiff's claim):

(1a) An employer registration was created on 20 April 1985 under the Employer Registration No 5563216, in the name of Persatuan Bola Sepak Kedah. The record also showed that on 31 July 1998, an association was registered with the Sports Commissioner under the name Persatuan Bola Sepak Kedah Darul Aman. D1 was an association registered under the Sports Development Act 1997. Throughout the period relevant to this claim, Employer Registration No 5563216 continued to be used in the plaintiff's statutory assessments (Form E) referring to the employer as Persatuan Bola Sepak Kedah Darul Aman. D1 continued to operate and deal with the plaintiff under Employer Registration No 5563216 and at no time during the material period did it assert that the registration was incorrect or belonged to a different body. The plaintiff had rightly proceeded against D1 as the employer under s. 2 of the EPF Act, and that Employer Registration No 5563216 pertained to the same association now known as Persatuan Bola Sepak Kedah Darul Aman. (paras 31-39)

(1b) D1 was estopped by conduct from denying its identity as the registered employer. By consistently utilising Employer Registration No. 5563216 for its statutory dealings and failing to object to the name 'Persatuan Bola Sepak Kedah' in various Form E assessments over several years, D1 had represented itself as that very entity. It could not now, at the trial stage, seek to resile from that position to the detriment of the employees' fund. Accordingly, D1 was the employer for the plaintiff's claim and was liable for the outstanding contributions for the period in question. (paras 40-42)

(2) The plaintiff's case rested on the statutory evidentiary effect of the documents tendered, namely Form E and exh. P2. The statutory function of SP2, the inspecting officer appointed under s. 37A of the EPF Act, included conducting inspections, examinations and

A assessments of contribution compliance. Assessments were carried out by retrieving salary and payroll records and processing them through the Enforcement Management System (EMS), which automatically calculated contributions due. The certificate issued under s. 64 of the EPF Act, read together with the Form E assessments, was therefore
B *prima facie* proof of the debt. The defendant did not produce any contrary evidence, salary records, alternative calculations, or expert analysis to rebut the assessment. Accordingly, this court accepted the plaintiff's evidence as to the outstanding amount of RM503,681 together with dividends under s. 45(3) and late payment charges under
C s. 49 of the EPF Act, accruing until full settlement. (paras 49-59)

(3a) Section 46(1) of the EPF Act provides that where the employer is an association, every office bearer of that association at the time of the default is jointly and severally liable with the association for the outstanding contributions, dividends and late payment charges.
D Section 46 of the EPF Act does not make liability contingent upon (i) whether the office bearer was remunerated; (ii) whether the office bearer personally handled payroll; and (iii) whether the office bearer was involved in daily financial decisions. The wording of the statute was clear, strict and unqualified: liability attaches by virtue of holding
E office during the period of default. (paras 61-65)

(3b) The rationale behind the strict application of s. 46 of the EPF Act is that office bearers are the alter ego of the association. They are the directing mind and will of the entity. Parliament, in its wisdom, has seen fit to ensure that those who take up the mantle of leadership also
F shoulder the responsibility of ensuring statutory compliance. To allow an office bearer to escape liability by claiming a 'voluntary' or 'non-active' status would be to stultify the very protections the Act seeks to provide. (para 66)

(3c) D2, D4 and D7 held office in D1 during the relevant period. The law
G is trite that the plaintiff could rely on s. 46 of the EPF Act to hold D2, D4 and D7 individually liable, irrespective of any ambiguity in initial claims or orders, thereby upholding the primary objective of the EPF Act. Therefore, D2, D4 and D7 were jointly and severally liable with D1 for all outstanding EPF contributions, dividends under s. 45(3) and
H late payment charges under s. 49, for the periods during which each of them held office. (paras 68-77)

(4) Office bearers are not passive figureheads. By law and organisational governance, they bear collective supervisory and oversight responsibility over the employer entity. Non-joinder of other potential
I office bearers is not a defence. The right to sue some or all potential joint tortfeasors lay entirely with the plaintiff. D2, D4 and D7 were

office bearers of D1 during the period of default. This was evident from the corporate and association records tendered. They therefore fell within the statutory category of persons jointly liable for the contributions assessed. The plaintiff was entitled to proceed against any or all office bearers. The defendants' remedy, if they believed others should contribute, lay in seeking indemnity or contribution from those persons and not in resisting liability in this action. D2, D4 and D7 were jointly and severally liable for the outstanding contributions, dividends and late payment charges pursuant to s. 46(1) of the EPF Act. (paras 86-92)

(5) The plaintiff had successfully proved its case on a balance of probabilities against the remaining defendants. (para 93)

Case(s) referred to:

Datuk Bandar Kuala Lumpur v. Zain Azahari Zainal Abidin [1997] 2 CLJ 248 CA ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja lwn. NCH Corporation (M) Sdn Bhd & Yang Lain [2017] CLJU 2160; [2017] 1 LNS 2160 HC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Adorna RMIT Sdn Bhd & Ors [2003] CLJU 482; [2003] 1 LNS 482 HC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Azimuddin Ab Ghani & Ors [2012] 1 CLJ 522 HC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Edwin Cassian Nagappan [2021] 7 CLJ 823 FC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Goon Institution Sdn Bhd & Ors; Sateras Resources (M) Bhd (Third Party) [2011] 10 CLJ 403 HC ***(refd)***

Lembaga Kumpulan Simpanan Pekerja v. HOL Chainstore (M) Sdn Bhd & Ors [2014] 7 MLJ 622 HC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Len Omnibus Company Bhd & Others [2010] MLJU 1750 HC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Mohd Abdul Karim Abdullah & Ors [2023] 9 CLJ 976 HC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja lwn. Persatuan Bola Sepak Kelantan & Yang Lain [2019] 8 CLJ 527 HC ***(dist)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Suasa Kristal (M) Bhd & Ors [2009] 8 CLJ 236 HC ***(refd)***

Legislation referred to:

Employees Provident Fund Act 1991, ss. 2, 3, 37A, 43, 45(3), 46(1), 49(1), 64, 69
Employees Provident Fund Regulations 2001, reg. 3(1)
Employees Provident Fund Rules 1991, r. 28
Rules of Court 2012, O. 16

For the plaintiff - Abd Shukor Ahmad, Aaron Aiman Thangarajoo & Michelle Liew Jet Nee; M/s Shukor Baljit & Partners
For the 1st defendant - Ahmad Taufiq Baharum; M/s Abdul Halim Said & Co
For the 2nd, 4th & 7th defendants - Mior Nor Haidir Suhaimi; M/s Haidir & Co

Reported by Suhainah Wahiduddin

A

JUDGMENT
(after trial)

Johan Lee Kien How J:

Introduction

B **[1]** This case centres on the plaintiff's claim to hold D1 and its office bearers, D2 to D9, jointly and severally liable for unremitted employee retirement fund contributions in violation of statutory obligations. In evaluating this claim, the court must remain mindful that the EPF Act 1991 is a piece of social security legislation designed to protect the welfare of
C employees. It is settled law that such statutes must be interpreted liberally and purposively to ensure that the statutory protection intended by Parliament is not undermined by technicalities or administrative oversights.

The Factual Background

D **[2]** The case was initiated by the Employees' Provident Fund (EPF), a corporation established under s. 3 of the Employees Provident Fund Act 1991 ("EPF Act 1991").

[3] The D1 association is registered under the Sports Development Act 1997 ("the SDA 1997").

E **[4]** The plaintiff claimed that D1 was, at all material times, classified as an 'employer' under s. 2 of the EPF Act 1991. Consequently, D1 was legally responsible under ss. 43 and 45 of the EPF Act 1991 and reg. 3(1) of the EPF Regulations 2001 to remit monthly contributions for its employees to the plaintiff, with payments required to reach the plaintiff no later than the
F 15th day after the end of the relevant month.

[5] The plaintiff claimed that D1 failed, refused, and/or was negligent in submitting these mandatory EPF contributions for the period spanning December 2019 until July 2020.

G **[6]** Due to this failure, the plaintiff asserted that the total principal amounts of outstanding contributions were RM1,519,801. This total comprised monthly arrears, including specific amounts such as RM158,019 for December 2019 and RM212,790 for February 2020.

[7] Furthermore, the plaintiff sought additional statutory liabilities such
H as dividends (calculated at 5% per annum for 2019) under s. 45(3) of the EPF Act 1991, and late payment charges (estimated at 6% per annum for the period 1 January 2019 to 31 December 2019) under s. 49(1) of the EPF Act 1991, accruing until the date of full settlement.

I **[8]** The case against the individual defendants (D2 to D9) was based on s. 46 of the EPF Act 1991, which imposes joint and several liability on office bearers of an association for unpaid contributions and related charges.

[9] The defendants were identified as the office bearers during the material time. The liability amount varied based on their specific tenure:

(i) D3, D5, D6, D8, and D9 were claimed against for the full outstanding amount of RM1,519,801 (December 2019 to July 2020). D9 resigned in August 2020, while D3, D5, D6, and D8 remained the office bearers as of the filing date; and

(ii) D2, D4, and D7 were claimed against for a lower amount of RM1,343,156 (December 2019 until June 2020), as they had resigned earlier (D7 resigned on 18 May 2020, and D2 and D4 resigned on 28 May 2020).

[10] Despite the plaintiff issuing a notice of demand dated 30 December 2020 to all the defendants, they collectively failed, refused, and/or were negligent in paying the total amount due.

[11] Before the trial commenced, the plaintiff had already received RM1,016,120 from D3, D5, D6, D8, and D9, leading to the discontinuation of the action against them as per the court order dated 30 April 2024 (encl. 82); thus, the trial proceeds solely between the plaintiff and D1, D2, D4, and D7.

[12] Following the payment and settlement reached with D3, D5, D6, D8, and D9, the remaining balance of contributions ("the revised claim") sought against D1, D2, D4 and D7 is as follows:

(i) the outstanding EPF contributions of the employees of RM 503,681;

(ii) dividends calculated on the outstanding contributions of RM 503,681 at the following rates:

  (a) 5% per annum from 1 January 2019 to 31 December 2019;

  (b) 4.90% per annum from 1 January 2020 to 31 December 2021;

  (c) 5.65% per annum from 1 January 2020 to 31 December 2021;

  (d) 4.75% per annum from 1 January 2021 to 31 December 2021;

  (e) 5.40% per annum from 1 January 2022 to 31 December 2023;

  (f) 6.30% per annum from 1 January 2024 to 31 December 2024;

  (g) such further dividends as shall be declared by the plaintiff for each subsequent year until full settlement;

(iii) late payment charges calculated on the outstanding contributions of RM503,681 at the following rates:

  (a) 6.00% per annum from 1 January 2019 to 31 December 2019;

  (b) 5.90% per annum from 1 January 2020 to 31 December 2020;

A (c) 6.65% per annum from 1 January 2021 to 31 December 2021;

(d) 5.75% per annum from 1 January 2022 to 31 December 2022;

(e) 6.40% per annum from 1 January 2023 to 31 December 2023; and

(f) 7.30% per annum from 1 January 2024 to 31 December 2024.

B

The Plaintiff's Claim

[13] The plaintiff's claim centres on the failure of the defendants, particularly D1, to remit outstanding EPF contributions for the period of December 2019 to July 2020.

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[14] Relying on the judgment of *Lembaga Kumpulan Wang Simpanan Pekerja v. Len Omnibus Company Bhd & Others* [2010] MLJU 1750, the plaintiff asserts that D1, as an employer under s. 2 of the EPF Act 1991, it is statutorily obligated to make monthly contributions on behalf of its employees.

D

[15] Furthermore, the plaintiff argues that D2, D4, and D7, as the office bearers of D1, are jointly and severally liable with D1 for the outstanding contributions, dividends, and late payment charges, referencing s. 46(1) of the EPF Act 1991 (see *Lembaga Kumpulan Wang Simpanan Pekerja v. Suasa Kristal (M) Bhd & Ors* [2009] 8 CLJ 236).

E

[16] The plaintiff emphasises that a certificate issued under s. 64 of the EPF Act 1991 ("the certificate") and the plaintiff's assessment forms ("Form E") constitute *prima facie* evidence of the defendants' indebtedness. The plaintiff cited the case of *Lembaga Kumpulan Wang Simpanan Pekerja lwn. NCH Corporation (M) Sdn Bhd & Yang Lain* [2017] CLJU 2160; [2017] 1 LNS 2160 and a few others to support its contention.

F

D1's Case

[17] It is a matter of record that D1 filed no written submissions after the conclusion of the trial. Therefore, this court's decision rests solely upon the pleadings and oral submissions presented by D1's learned counsel, noting further that D1 did not produce any witnesses at trial.

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[18] During oral submission, D1's learned counsel advanced a three-pronged argument. First, they contended that the plaintiff had not discharged its burden of proof, specifically failing to demonstrate that Persatuan Bola Sepak Kedah and D1 are the same entity.

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[19] D1 further argued that the plaintiff's revised claim of RM503,681 was insufficiently supported by evidence, and that the testimony offered was unreliable hearsay.

I

[20] Third, D1 contended that the 'akuan penerimaan salinan taksiran tunggakan' dated 4 October 2020 (see B1, p. 98) (encl. 73) ("the letter of acknowledgement of receipt of assessment copy of arrears") did not operate as recognition that D1 and Persatuan Bola Sepak Kedah were the same entity.

[21] Although the acknowledgement was signed by a staff member of Persatuan Bola Sepak Kedah Darul Aman, D1 argued that this did not amount to an admission of identity, as the document was addressed to Persatuan Bola Sepak Kedah and not to Persatuan Bola Sepak Kedah Darul Aman.

D2, D4 and D7s' Case

[22] Pursuant to their written submission (encl. 99), the position advanced by D2, D4 and D7 rests on three principal grounds:

(i) that the definition of employer under s. 2 of the EPF Act 1991 does not extend to them. They contend that the obligation to make contributions under s. 45 of the EPF Act 1991 applies only where an office bearer has assumed direct responsibility for the payment of contributions, which they deny having done;

(ii) that at all material times, they held their respective position voluntarily without receiving any salary, wages or benefits. On this basis, they maintain that they bear no personal liability and no joint responsibility with D1 for the arrears of contributions forming the subject matter of this proceeding; and

(iii) that the plaintiff's claim is lacking in clarity and precision, particularly in respect of the differing amounts alleged against each defendant. They described the revised claim as unmeritorious, defective, and procedurally flawed by reason of the joinder of all defendants in a single action, which they assert constitutes an abuse of process. They further contend that the plaintiff has failed to proceed against the other office bearers holding the status of executive members.

[23] In the same vein as D1, counsel for D2, D4 and D7 relied on the principle established in *Datuk Bandar Kuala Lumpur v. Zain Azahari Zainal Abidin* [1997] 2 CLJ 248, which states that evidence intended to prove a material fact must come from a witness with personal knowledge. Evidence that relies solely on information from a third party is deemed pure hearsay and is inadmissible as evidence.

The Issues To Be Determined By The Court

[24] The issues agreed between the plaintiff and D1 before the trial are as follows (encl. 72):

(i) whether D1 is an employer as defined under s. 2 of the EPF Act 1991 and is responsible for paying the outstanding revised claim, along with dividends and interest;

A (ii) whether D1, as the employer, is liable to pay the EPF contribution arrears as stipulated under s. 45 of the EPF Act 1991;

(iii) whether D1, being Persatuan Bola Sepak Kedah Darul Aman and Persatuan Bola Sepak Kedah, are the same entity; and

B (iv) whether D1 is registered with the Sports Commissioner of the Ministry of Youth and Sports Malaysia.

[25] Meanwhile, these are the issues agreed between the plaintiff and D2, D4, and D7 (encl. 71):

C (i) whether D2, D4, and D7, as the office bearers in the D1 association, are liable jointly and severally with D1 to pay the revised claim for the period December 2019 until June 2020, along with dividends and interest, as stipulated under s. 46 of the EPF Act 1991;

(ii) whether the type and amount of the plaintiff's revised claim are precise,
D accurate, and detailed;

(iii) whether the plaintiff's claim is wrong and defective due to the plaintiff's failure to claim against the other office bearers holding the status of executive committee member;

E (iv) whether the plaintiff's claim is wrong and defective for uniting the action against all defendants despite the difference in the amount claimed against D2, D4, and D7 compared to the other defendants; and

(v) whether the plaintiff's action of combining all defendants in one action is defective and constitutes an abuse of the court process.

F **Decisions, Findings And Evaluations Of The Court**

[26] Having appraised the evidence and all witnesses put forward by all the parties, and having considered the submissions by learned counsel for both parties, I find that the plaintiff had succeeded in proving on a balance of probabilities that in all the facts and circumstances of the case, D1, as the
G statutory employer, breached its mandatory obligation to remit employee contributions.

[27] Furthermore, the plaintiff succeeded in establishing the joint and several liability of the office bearers, D2, D4 and D7 for the revised claim
H and associated statutory charges, pursuant to s. 46 of the EPF Act 1991.

[28] I therefore find substantial grounds for the claim against D1, D2, D4, and D7 as the plaintiff has succeeded in proving the requisite breach of statutory duties under the EPF Act 1991.

[29] Consequently, the claim against D1, D2, D4 and D7 is allowed,
I requiring them to pay the revised claim of the outstanding balance of EPF contributions amounting to RM503,681, along with dividends and late payment charges. Herein are my reasons.

D1's Identity

[30] The first issue concerns whether D1 is an employer within the meaning of s. 2 of the EPF Act 1991.

[31] The evidence shows that an employer registration (penyata seorang majikan) was created on 20 April 1985 under Employer Registration No 5563216, in the name of Persatuan Bola Sepak Kedah (see B1, p. 10; encl. 73).

[32] The records also show that on 31 July 1998, an association was registered with the Sports Commissioner under the name of Persatuan Bola Sepak Kedah Darul Aman (see B1, p. 9) (encl. 73).

[33] It is not disputed that D1 is an association registered under the Sports Development Act 1997. The issue is whether the body registered in 1985 for EPF purposes and the body registered in 1998 under the new name refer to the same legal association, notwithstanding the change in nomenclature.

[34] Throughout the period relevant to this claim, Employer Registration No 5563216 continued to be used in the plaintiff's statutory assessments (Form E) referring to the employer as Persatuan Bola Sepak Kedah Darul Aman (see B1, pp. 63-96) (encl. 73).

[35] SP1 and SP2 both testified that Employer Registration No 5563216 remained active and in use all these years for D1's contribution compliance, and that D1 had never made any objection or request to amend the employer's details to the plaintiff.

[36] The evidence demonstrates that D1 continued to operate and deal with the plaintiff under Employer Registration No 5563216, and that at no time during the material period did it assert that the registration was incorrect or belonged to a different body.

[37] Further, the acknowledgement of receipt of assessment of arrears dated 4 October 2020 was signed by a staff member of Persatuan Bola Sepak Kedah Darul Aman ("exh. P1"). The simple logic is this: if D1 genuinely regarded the name Persatuan Bola Sepak Kedah as referring to a different and unrelated entity, it would not reasonably have accepted, acknowledged or acted upon correspondence issued to that name. The conduct is consistent with the recognition of continuity of identity.

[38] If D1 had maintained a genuine position that it was a different legal entity from the employer registered in 1985, such an objection would reasonably have been raised at the time of receiving Form E, Form F, or exh. P1, rather than only during the trial. The timing and manner of the objection, therefore, undermine its credibility.

[39] On the totality of the evidence and the conduct of the parties, I find that the plaintiff rightly proceeded against D1 as the employer under s. 2 of the EPF Act 1991, and that Employer Registration No 5563216 pertains to the same association now known as Persatuan Bola Sepak Kedah Darul Aman.

[40] Furthermore, the first defendant is estopped by conduct from denying its identity as the registered employer. By consistently utilising Employer Registration No 5563216 for its statutory dealings and failing to object to the name 'Persatuan Bola Sepak Kedah' in various Form E assessments over several years, D1 has represented itself as that very entity. It cannot now, at the trial stage, seek to resile from that position to the detriment of the employees' fund.

[41] As such, the question of D1's obligation to remit EPF contributions under ss. 43 and 45 of the EPF Act 1991 turns on the established documentary record showing D1's use of employer account 5563216 and the unchallenged assessment notices. It is not contested that the statutory obligation to remit applies where an employer account has been recorded and assessments issued.

[42] Accordingly, having regard to the evidence in the common bundle and the Form E assessments, I hold that D1 is the employer for the plaintiff's claim and is liable for the outstanding contributions for the period in question.

Prima Facie Evidence Of Quantum

[43] The plaintiff relies on s. 64 of the EPF Act 1991, which provides that the certificate issued by an authorised officer of the board shall be the *prima facie* evidence of the amount due and payable (in this case, the revised claim), as follows:

> 64. Certificate of an authorised officer of the Board to be evidence
>
> In any legal proceedings, **a certificate in relation to a claim on contributions payable and duly certified by an authorised officer of the Board shall be *prima facie* evidence** of such certificate having been made and of the truth of the contents thereof.
>
> (emphasis added)

[44] The plaintiff had physically tendered and marked these documents, through its witness, who is the EPF Head of Enforcement, SP1, during trial:

(i) 'surat akuan penerimaan salinan taksiran tunggakan' (see B1, p. 98) (encl. 73) marked as exh. P1 ("exh. 1"); and

(ii) 'perakuan tuntutan caruman yang kena dibayar' (see B1, p. 99) (encl. 73) marked as exh. P2 ("exh. 2").

[45] It is worth noting that both exhs. P1 and P2 were admitted into evidence without any objection from D1, D2, D4 or D7 at the trial.

[46] During cross-examination, counsel for D1 objected to portions of the evidence of SP2, the EPF inspecting officer responsible for preparing Form E, on the ground that SP2 was not personally involved in the employer registration in 1985 and 1998.

[47] It was argued that, lacking first-hand knowledge of the historical registration process and the subsequent adjustment of the quantum, SP2's testimony on both the identity of the employer and the computation of the revised outstanding sum amounted to hearsay.

[48] Similarly, D2, D4 and D7 contended that SP2 had no personal knowledge of the internal process by which the outstanding sum was reduced from RM1.5 million to RM503,681. Therefore, his testimony on the quantum was unreliable.

[49] I find these objections to be without merit. The plaintiff's case does not rest on SP2's personal knowledge of the historical registration process nor on the subjective recollection of any officer. Instead, it rests on the statutory evidentiary effect of the documents tendered, namely Form E and exh. P2.

[50] SP2, being an inspecting officer appointed under s. 37A of the EPF Act 1991, explained that his statutory function includes conducting inspections, examinations and assessments of contribution compliance.

[51] In performing these duties, SP2 testified during trial that assessments are carried out by retrieving salary and payroll records and processing them through the Enforcement Management System (EMS), which automatically calculates contributions due. Form E, issued for the relevant period (see B2, pp. 4 to 37), reflects these statutory assessments.

[52] In addition, Form F, issued pursuant to r. 28 of the EPF Rules 1991, is a notice of demand served upon an employer to notify the contribution arrears assessed in Form E.

[53] SP1 confirmed that upon issuance of Form F, the employer is afforded 14 days to dispute the assessment. It is not disputed that D1 did not submit any objection within this statutory period.

[54] The certificate issued under s. 64 of the EPF Act 1991, read together with the Form E assessments, is therefore *prima facie* proof of the debt. Once tendered, the burden shifts to the defendants to demonstrate a manifest error in the evaluation.

[55] Yeoh Wee Siam J in *Lembaga Kumpulan Simpanan Pekerja v. HOL Chainstore (M) Sdn Bhd & Ors* [2014] 7 MLJ 622, affirmed that a s. 64 certificate carries statutory evidentiary weight as proof of indebtedness:

> The Court fully agrees with the written Submissions of Counsel for the plaintiff. A few salient points need to be highlighted:
>
> (1) under s. 64 of the EPF Act 1991 the Certificate of Indebtedness dated 11.11.2011 (exhibit NSI-7 of plaintiff's Affidavit In Support) shall be "*prima facie*" evidence "of the debt outstanding by the 1st defendant Company ("the Company") and its Directors.
>
> Pursuant to s. 46 of the EPF Act 1991, in the event that any contributions remain unpaid, then any persons who were registered as directors of the company during the period of default, shall together with the company, be jointly and severally liable for all contributions, dividends and interest owing.
>
> *The Certificate of Indebtedness read together with Form E (Form EPF 7) is "binding" and "conclusive" proof of the total debt outstanding until and unless the 1st defendant and/or the Directors can prove a manifest error in the calculation of the EPF contributions owing as claimed by the plaintiff.*
>
> (emphasis added)

[56] In the same vein, in *Lembaga Kumpulan Wang Simpanan Pekerja v. Azimuddin Ab Ghani & Ors* [2012] 1 CLJ 522; [2011] MLJU 234, Lee Swee Seng JC (as he then was) held that the certificate and Form E are conclusive unless the employer proves error. (See also *Lembaga Kumpulan Wang Simpanan Pekerja lwn. NCH Corporation (M) Sdn Bhd & Yang Lain* [2017] CLJU 2160; [2017] 1 LNS 2160).

[57] I further find support in *Lembaga Kumpulan Wang Simpanan Pekerja v. Goon Institution Sdn Bhd & Ors; Sateras Resources (M) Bhd (Third Party)* [2011] 10 CLJ 403, where Lee Swee Seng JC (as he then was) held that once the EPF produces the Form E assessments and s. 64 certificates, the amount claimed stands as proved unless the employer produces contrary records. In the absence of such evidence, the EPF's figures are accepted as final:

> [42] The relevant defendants have not raised any evidence to rebut the plaintiff's *prima facie* evidence of the amount outstanding. The plaintiff had exhibited four certificates to cover the amount outstanding for the periods stated in prayers 1-4. There was also exhibited various Form E, which contains the particulars of the employees' names, their EPF numbers, and the period for which arrears of EPF contributions were due and payable by the employer. **In the absence of any credible and cogent figures to the contrary the *prima facie* evidence of the plaintiff stands unrebutted**.
>
> (emphasis added)

[58] In the present case, the defendants did not produce any contrary evidence, salary records, alternative calculations, or expert analysis to rebut the assessment. The hearsay objection does not displace the statutory effect of s. 64 of the EPF Act 1991.

[59] Accordingly, I accept the plaintiff's evidence as to the outstanding amount of RM503,681, together with the dividends under s. 45(3) and late payment charges under s. 49 of the EPF Act 1991, accruing until full settlement.

Liability As Office Bearers

[60] The next issue concerns whether D2, D4 and D7, as the office bearers of D1 during the period of default, are jointly and severally liable for the outstanding contributions pursuant to s. 46(1) of the EPF Act 1991.

[61] Section 46(1) of the EPF Act 1991 provides that where the employer is an association, every office bearer of that association at the time of the default is jointly and severally liable with the association for the outstanding contributions, dividends and late payment charges.

[62] It is not disputed that D2, D4 and D7 held office in D1 during the relevant period. The plaintiff tendered D1's own organisational records, showing their positions (Cabutan Minit Kongres Tahunan Kali Ke-43 Defendan Pertama bagi Agenda 14) (see B1, pp. 11 to 18) (encl. 73). The dates of their resignation or cessation of role correspond with the differing periods, and sums claimed against them.

[63] D2, D4, and D7 argue that they should not be personally liable because they served voluntarily, received no salary or allowance, and allegedly did not exercise financial authority or supervisory control over the management of contributions.

[64] This court could not accept this argument. Section 46 of the EPF Act 1991 does not make liability contingent upon: (i) whether the office bearer was remunerated; (ii) whether the office bearer personally handled payroll; or (iii) whether the office bearer was involved in daily financial decisions.

[65] The wording of the statute is clear, strict, and unqualified: liability attaches by virtue of holding office during the period of default. This interpretation has been consistently affirmed in *Lembaga Kumpulan Wang Simpanan Pekerja v. Suasa Kristal (M) Bhd & Ors* [2009] 8 CLJ 236, where Balia Yusof JC (as he then was) at p. 242 ruled that s. 46 of the EPF Act 1991 imposes automatic joint and several liability once default is established:

> Section 46 of the Act does not make any distinction between nominee, active or non-active director, and neither is the word director defined under the Act. In law, **there is no difference in the liabilities of these directors**.
>
> (emphasis added)

(See also *Lembaga Kumpulan Wang Simpanan Pekerja v. Adorna RMIT Sdn Bhd & Ors* [2003] CLJU 482; [2003] 1 LNS 482; [2003] 4 MLJ 729)

[66] The rationale behind the strict application of s. 46 is that office bearers are the alter ego of the association. They are the directing mind and will of the entity. Parliament, in its wisdom, has seen fit to ensure that those who take up the mantle of leadership also shoulder the responsibility of ensuring statutory compliance. To allow an office bearer to escape liability by claiming a 'voluntary' or 'non-active' status would be to stultify the very protections the Act seeks to provide.

[67] The apex court in *Lembaga Kumpulan Wang Simpanan Pekerja v. Edwin Cassian Nagappan* [2021] 7 CLJ 823; [2021] 5 MLJ 253 could not be clearer, when Nallini Pathmanathan FCJ conclusively addresses the interpretation and enforcement of s. 46 of the EPF Act 1991, particularly regarding the joint and several liability of the office bearers (directors):

> [36] The instant appeal concerns a consent judgment entered into between the parties. Of primary importance is s. 46 of the EPF Act which imposes joint and several liability on the directors of a company for unpaid contributions. *These provisions must be given full effect, as they comprise statutory law. It is not open to the Courts to stultify, vary or whittle down the clear provisions promulgated by Parliament in relation to liability for EPF contributions, by construing judgments in manner which is not consonant with the EPF Act*. In short, the EPF Act prevails over the terms of the judgment.
>
> (emphasis added)

(See also *Lembaga Kumpulan Wang Simpanan Pekerja v. Mohd Abdul Karim Abdullah & Ors* [2023] 9 CLJ 976; [2024] 7 MLJ 566).

[68] Therefore, the law is trite that the plaintiff can rely on s. 46 of the EPF Act 1991 to hold D2, D4, and D7 individually liable, irrespective of any ambiguity in initial claims or orders, thereby upholding the primary objective of the EPF Act.

[69] The defendants further contend that they cannot be sued because some other committee members were not named. Again, this argument is untenable. The plaintiff is entitled to proceed against any or all office bearers who held office at the relevant time. The statutory liability under s. 46 is individual and concurrent, not collective or all-or-nothing.

[70] No evidence was produced to show that any other person assumed responsibility for preventing the default, nor that D2, D4 or D7 took steps to ensure compliance with contribution requirements. The defendants, therefore, failed to rebut the statutory presumption of liability.

[71] Learned counsel for D2, D4 and D7 heavily relied on *Lembaga Kumpulan Wang Simpanan Pekerja lwn. Persatuan Bola Sepak Kelantan & Yang Lain* [2019] 8 CLJ 527 to argue that voluntary office bearers without financial control cannot be held personally liable. I find that this reliance is misplaced.

[72] The *Persatuan Bola Sepak Kelantan* (*supra*) case was decided under s. 69 of the EPF Act 1991, which concerns criminal liability, requiring proof of consent, connivance or neglect. The issue in that case was therefore a fault.

[73] In contrast, the present action is brought under s. 46, which is a civil recovery provision imposing strict liability by virtue of position. Unlike s. 69, which requires proof of 'fault' (consent, connivance, or neglect), s. 46 creates a statutory debt that attaches automatically once the default is established, irrespective of the office bearer's personal involvement or remuneration.

[74] Further, in *Persatuan Bola Sepak Kelantan* (*supra*), the office bearers produced evidence showing they had no control over finances, no access to the association's accounts, and they attempted to prevent the non-payment.

[75] In the present case, no such evidence was produced by D2, D4 or D7. Their bare denial of involvement is insufficient to displace the statutory operation of s. 46.

[76] Accordingly, *Persatuan Bola Sepak Kelantan* (*supra*) is distinguishable. It does not assist the defendants, particularly D2, D4, and D7, as the case concerns an interlocutory application and the court is not required to make findings on contested factual matters. The plaintiff needs only demonstrate a *prima facie* case, which burden has been met.

[77] I therefore hold that D2, D4 and D7 are jointly and severally liable with D1 for all outstanding EPF contributions, dividends under s. 45(3) and late payment charges under s. 49, for the periods during which each of them held office.

Joinder & Selective Prosecution

[78] D2, D4 and D7 further alleged that the plaintiff's action was flawed due to selective targeting. They argued that the other executive committee members of D1 who held office during the material period were not joined as defendants, thereby suggesting the plaintiff singled them out unfairly.

[79] They relied on s. 69 of the EPF Act 1991, which concerns criminal offences committed with the consent, connivance, or neglect of an officer. They submitted that the plaintiff was required to prove that they had actual knowledge, control, or participated in the failure to remit contributions.

[80] They also pointed to the existence of other office bearers, including the treasurer and other paid administrative officers, who are not sued.

[81] They further submitted that liability should attach only where a defendant had direct involvement in financial administration, suggesting that since no evidence was led to show that D2, D4, and D7 handled accounts or authorised payments, there was insufficient basis to impose personal liability.

[82] D2, D4, and D7 used the political link between the change in leadership and the timing of the lawsuit to reinforce their legal argument that the plaintiff engaged in selective enforcement by choosing to sue specific unpaid, volunteer office bearers over others.

[83] The plaintiff, in response, asserted that D2, D4 and D7s' reliance on s. 69 of the EPF Act 1991 was misplaced. The plaintiff submitted that the present claim is not a criminal prosecution, but a claim for recovery of contributions under the civil recovery framework of the EPF Act. In such cases, s. 46(1) applies, not s. 69.

[84] Under s. 46(1) of the EPF Act 1991, where an employer fails to pay contributions, "every director or person responsible for the management of the affairs of the body" at the time of default is jointly and severally liable with the employer.

[85] The provision does not require proof of knowledge, consent, negligence, or involvement in financial administration. Liability arises from holding office during the period of default.

[86] The plaintiff further stressed that office bearers are not passive figureheads. By law and organisational governance, they bear collective supervisory and oversight responsibility over the employer entity.

[87] The plaintiff also highlighted that non-joinder of other potential office bearers is not a defence. The right to sue some or all potential joint tortfeasors lies entirely with the plaintiff. The defendants did not apply for third-party proceedings under O. 16 of the Rules of Court 2012 to join any additional parties whom they allege to share responsibility.

[88] The court notes that s. 46 of the EPF Act 1991 has been consistently interpreted as imposing strict and joint liability. Directors are the alter ego of the entity. Hence, it is considered inappropriate for an office bearer to attempt to escape culpability by pleading that they are a sleeping partner or director, or a silent director or a non-active director (see *Lembaga Kumpulan Wang Simpanan Pekerja v. Adorna Rmit Sdn Bhd & Ors* [2003] CLJU 482; [2003] 1 LNS 482; [2003] 4 MLJ 729 at p. 734).

[89] I agree with the plaintiff that s. 69 is wholly inapplicable – s. 69 concerns criminal liability, where the prosecution must show consent or connivance. The present claim is civil in nature, arising from unpaid compulsory contributions. As such, s. 46 applies squarely, and the defendants' attempt to import the mental element requirement under s. 69 cannot succeed.

[90] On the facts, it is undisputed that D2, D4 and D7 were the office bearers of D1 during the period of default. This is evident from the corporate and association records tendered. They therefore fall within the statutory category of persons jointly liable for the contributions assessed.

[91] Accordingly, I reject the argument of selective targeting. The plaintiff was entitled to proceed against any or all office bearers. The defendants' remedy, if they believed others should contribute, lay in seeking indemnity or contribution from those persons and not in resisting liability in this action.

[92] I therefore hold that D2, D4 and D7 are jointly and severally liable for the outstanding contributions, dividends and late payment charges pursuant to s. 46(1) of the EPF Act 1991.

Conclusion

[93] For the foregoing reasons, the plaintiff has successfully proved its case on a balance of probabilities against the remaining defendants. The plaintiff's claim is allowed, and it is hereby ordered that:

(i) D1, D2, D4, and D7 are jointly and severally liable to the plaintiff for the sum of RM503,681, representing the outstanding balance of EPF contributions;

(ii) D1, D2, D4, and D7 shall pay statutory charges on the outstanding balance, namely dividends calculated at a rate of 5% per annum from 1 January 2019 until 31 December 2019, and continuing at the rate of any subsequent dividends declared yearly thereafter until full settlement;

(iii) D1, D2, D4, and D7 shall pay late payment charges calculated at a rate of 6% per annum from 1 January 2019 until 31 December 2019, and continuing at the rate of any subsequent charges declared yearly thereafter until full settlement; and

(iv) D1, D2, D4, and D7 shall pay the plaintiff the costs of this action.